

COPY 2

NEW HAMPSHIRE
OFFICE OF ATTORNEY-GENERAL

NEW HAMPSHIRE LAW LIBRARY

1955

August 11

SEP 22 1998

CONCORD, N.H.

Mr. Kenneth L. Cowan, Director
Division of Inheritance Taxes
State House
Concord, New Hampshire

Dear Sir:

Under date of August 3rd, 1955 you referred to Revised Laws, chapter 87, section 67 and you inquired whether a bank, knowing that a joint owner of a deposit has died, and being certain that the surviving joint tenant is in a tax exempt class, may lawfully pay the balance of such deposit over to the survivor without first receiving your consent. We answer in the negative.

While, as will be noted hereinafter, other statutory provisions are pertinent, the conclusion may rest entirely upon the appropriate provisions of chapter 87. Section 67 directs that

"no bank or other institutions . . . having in possession, or under control . . . deposits . . . belonging to or standing in the name of . . . a decedent and one or more persons shall . . . deliver or transfer the same to any other person, except a resident executor or administrator of the estate without the written consent of the Tax Commission."

Section 72 of the same statute renders a depository liable for a penalty of not more than one thousand dollars for failure to comply with this provision; and in addition the institution is liable for any tax, interest or penalty due under the law with respect to the deposit.

It is clear from the foregoing that it is the purpose of the law that the Commission -- represented by your office, Revised Laws, chapter 86-A as inserted by Laws 1950, chapter 5, Part 8, section 49 -- should have both the duty and the opportunity to determine whether the passage of the once jointly-held property to the survivor gives rise to the tax of Revised Laws, chapter 87. See sections 3 and 4. The depository is not only liable for any tax, it is also subject to a separate penalty for failing to afford to the properly authorized officials the opportunity to pass upon taxability. The penalty is imposed whether a tax is lawfully due or not; the penalty is not with respect to the tax -- it is with respect to a procedural requirement imposed by law. While the statute is

C O P Y

Mr. Kenneth L. Cowan, Director

-2-

silent in this regard, it is believed that liability to a penalty is not absolute in the sense that it might be imposed regardless of whether or not the depository was aware of the death of the decedent. Knowledge of that fact, we believe, is an essential condition to liability.

In your letter you also referred to Revised Laws, chapter 314, section 8. This statute, applicable to building and loan associations prohibits an association having knowledge of the death of a joint owner from paying a joint account balance to the survivor without a certificate from you. Your attention is invited to Revised Laws, chapter 309, section 20 which contains a similar provision dealing with savings banks. These provisions are, in the least, confirmatory of the taxing statute. They contain no penal provision however, and while they may well be enforced by civil process of an injunctive nature, compliance with the law is more appropriately to be enforced through the provisions of chapter 87.

Very truly yours,

Warren E. Waters
Deputy Attorney General

WEN/T